

1 SEDGWICK, DETERT, MORAN & ARNOLD LLP
SCOTT D. MROZ Bar No. 111848
2 BRETT H. BAILEY Bar No. 156011
One Embarcadero Center, 16th Floor
3 San Francisco, California 94111-3628
Telephone: (415) 781-7900
4 Facsimile: (415) 781-2635

5 Attorneys for Petitioner
6 Beckman Capital Corporation

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9 BEFORE THE STATE OF CALIFORNIA
10 STATE WATER RESOURCES CONTROL BOARD
11

12 In Re: Petition of
13 Beckman Capital Corporation,
14 Petitioner
15
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PETITION NO: _____

**PETITION OF BECKMAN CAPITAL
CORPORATION FOR REVIEW OF
CENTRAL VALLEY REGIONAL WATER
QUALITY CONTROL BOARD ORDER
NO. R5-2004-0043**

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19 **PETITION FOR REVIEW**

20 Pursuant to Title 23, California Code of Regulations § 2050, Beckman Capital
21 Corporation (Beckman) hereby petitions the State Water Resources Control Board (State Water
22 Board) for review of Cleanup and Abatement Order No. R5-2004-0043 (Order). The Order was
23 issued by the Central Valley Regional Water Quality Control Board (Regional Water Board) on
24 April 22, 2004. A true and correct copy of the Order is attached hereto as Exhibit A.

25 The Order concerns tetrachloroethene (PCE) contamination in the City of Lodi,
26 California. Beckman owns property at 212 West Pine Street in the City of Lodi (the Property),
27 which it purchased in 1968. At no time did Beckman itself ever use PCE on its Property or
28 within the City of Lodi, let alone discharge or release PCE into the environment. Rather, the

1 Regional Water Board determined that Beckman's Property was contaminated with PCE
2 discharged by others, including: Guild Cleaners, Inc. (Guild), the City of Lodi (City), whose
3 sewer lines leaked PCE from Guild onto Beckman's Property, and the Lodi News Sentinel (Lodi
4 News), among others. [See Exhibit A, paragraphs 1-5.] These active dischargers are still in
5 existence and viable, and are named in the Order. The Regional Water Board also named
6 Beckman as responsible party under the Order, based entirely on the fact that it is the current
7 owner of Property that has been contaminated by others. [See Exhibit A, paragraph 6.]

8 In short, Beckman has been victimized as much as any one by the contamination.
9 Notwithstanding that fact, and notwithstanding that other, more culpable parties are available to
10 undertake responsibility for implementing the Order (and indeed have begun investigating the
11 contamination), the Regional Water Board nonetheless denied Beckman's request to be named as
12 a secondarily liable party, responsible for carrying out the Order only if the other parties failed to
13 do so. Instead, the Regional Water Board chose to place the same burden on the victim as the
14 perpetrators. This petition respectfully requests that the State Water Board undo this injustice by:
15 (1) invalidating the portion of the Order naming Beckman as a primarily responsible party; and
16 (2) requiring the Regional Water Board to instead name Beckman as a secondarily responsible
17 party, liable to carry out its mandate only if the primarily liable dischargers do not. Such an
18 approach would be consistent with previous decisions and guidelines issued by the State Water
19 Board, and with the approach of other Regional Water Quality Control Boards, as well as with
20 the demands of justice and equity.

21 In addition, Beckman requests a stay of the Order, as to Beckman only, pending
22 resolution of the issues identified herein. The matters required to be alleged for a stay, and the
23 facts supporting them, are stated in Section 10 below, and in the Declaration of Brett H. Bailey In
24 Support of Petition and Request for Stay by Beckman Capital Corporation (Bailey Declaration)
25 attached hereto as Exhibit B.

1. Name and Address of Petitioner:

Beckman Capital Corporation
P.O. Box 1300
Lodi, CA 95241

Beckman can be contacted through its legal counsel:

Scott D. Mroz
Brett H. Bailey
Sedgwick, Detert, Moran & Arnold
One Embarcadero Center, 18th floor
San Francisco, CA 94111
Telephone: (415) 781-7900
Facsimile: (415) 781-2635
e-mail: brett.bailey@sdma.com

2. Specific Action the State Water Board is Requested to Review:

The action of the Regional Water Board naming Beckman as a primarily responsible party, rather than a secondarily responsible party, in "CLEANUP AND ABATEMENT ORDER NO. R5-2004-0043, LODI CENTRAL PLUME AREA, LODI, SAN JOAQUIN COUNTY."

3. Date of the Regional Water Board's Action:

The Order was issued by the Regional Board on April 22, 2004.

4. Statement of Reasons why the Regional Board's Action was Inappropriate or Improper

(A) Evidence in the record shows that:

(1) Beckman itself neither participated in any discharges of PCE into the environment nor knew of them at the time they occurred;

(2) Beckman's property was contaminated through the activities of others, and it is Beckman's status as the owner of contaminated property, and nothing else, that makes it subject to an order under California Water Code §13304;

(3) other parties whose activities actually caused the contamination continue to exist and are capable of responding to the Order; and

(4) among those other parties some have already begun participating in the investigation and cleanup in the area covered by the Order.

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1 (B) Naming Beckman as a primarily responsible party under these circumstances, making
2 Beckman equally liable with those that polluted Beckman's Property, is inconsistent with State
3 Water Board orders as well as with the manner in which other Regional Water Quality Control
4 Boards have issued Cleanup and Abatement Orders (CAOs) to parties situated similarly to
5 Beckman.

6 (C) Adopted policy of the State Water Board is for the Regional Boards to "strive to be
7 fair, firm and consistent in taking enforcement actions throughout the State" and to "apply
8 similar requirements to similar situations." [See State Water Resources Control Board Resolution
9 no. 2002-0040 (Water Quality Enforcement Policy), pp. 1-2.] The Regional Water Board Order
10 naming Beckman as a primarily liable party:

11 (1) is not fair, in that it treats active dischargers and their victims as equally culpable and
12 places equal cleanup burdens on both, despite ample evidence and basis to distinguish between
13 the two; and

14 (2) is not consistent and does not constitute "applying similar requirements in similar
15 situations" when other parties, similarly situated, are named as secondarily liable parties by other
16 Regional Water Quality Control Boards and are not responsible, in the first instance, for meeting
17 the requirements of a CAO.

18 Therefore, the Regional Water Board decision naming Beckman as primarily liable is
19 arbitrary and capricious.

20 5. The Manner in which the Petitioner is Aggrieved

21 Petitioner is aggrieved financially because it is forced to respond to the Order in the first
22 instance, and spend its limited resources complying with the deadlines, requirements and
23 directions of the Regional Water Board, even though: (1) it did not cause the pollution; (2) it is
24 only named in the order by virtue of its status as an owner of property that has been polluted by
25 others; and (3) the parties which the Regional Water Board Order found to be active dischargers
26 – e.g. Guild Cleaners, Inc., the City of Lodi, and the Lodi News Sentinel, are all available to
27 fulfill the requirements of the Order, and in some instances have already been engaged in work to
28 investigate the PCE contamination.

1 6. The Specific Action by the State Water Board which Petitioner Requests

2 Beckman respectfully requests that the State Water Board: (1) stay the Order as to
3 Beckman; (2) invalidate the portion of the Order naming Beckman as a primarily responsible
4 party; and (3) require the Regional Water Board to instead name Beckman as a secondarily
5 responsible party.

6 7. Points and Authorities in Support of Legal Issues Raised in the Petition

7 A statement of Points and Authorities is attached as Exhibit C hereto.

8 8. This Petition has been sent to the Appropriate Regional Board and the Dischargers

9 A copy of this petition has been sent to the California Regional Water Quality Control
10 Board, Central Valley Region. A copy has also been sent to the other dischargers listed in the
11 order including: the City of Lodi, Guild Cleaners, Odd Fellows Hall Assn. of Lodi, the Estate of
12 Dwight Alquist, and Lodi News-Sentinel.

13 9. The Substantive Issues or Objections Raised in this Petition Were Raised before the
14 Regional Board

15 All of the substantive issues that are raised by this petition were raised before the
16 Regional Water Board.

17 10. Request for Stay Pending Resolution

18 Beckman requests a stay of the Order, as to Beckman only, pending the resolution of the
19 issues raised herein, and in support of this request, alleges the following:

20 (a) Petitioner already has been damaged by the presence of contamination it did not
21 cause on its Property, and would be substantially harmed financially if it is forced to respond to
22 the Order in the first instance, and spend its limited resources complying with the deadlines,
23 requirements and directions of the Regional Water Board, even though it did not cause the
24 pollution.

25 (b) No substantial harm will accrue to the public or to other parties if the requested
26 stay is granted, since other admitted dischargers, including Guild and the City, are available to
27 undertake the work required by the Order. In fact, Guild already has submitted an Remedial
28 Investigation and Feasibility Study, has conducted three pilot tests of remedial technologies, and

1 is otherwise investigating the contamination. Likewise, the City has expressed to the Regional
2 Water Board and in various open forums its intent to pursue investigation and clean up in
3 cooperation with the Board and other parties. To the extent these parties believe Beckman
4 should bear related costs, there are already contribution claims pending in the Federal District
5 Court for the Eastern District of California, and that forum can be used to determine the
6 appropriate allocation of costs expended pending resolution of the issues in this petition.

7 (c) The issues described in section 4 above, regarding the discrepancy between
8 Regional Boards over treatment of landowners of contaminated property, and this Regional
9 Water Board's Order being inconsistent with the State Water Board's prior order and its
10 Enforcement Policy, present substantial questions of law and fact regarding the Order.

11 Additional facts supporting these allegations are contained in the Bailey Declaration
12 attached as Exhibit B. Based on those facts, and for the foregoing reasons, a stay of the Order, as
13 to Beckman only, is proper during the pendency of this petition.
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15 DATED: May 21, 2004

SEDGWICK, DETERT, MORAN & ARNOLD LLP

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18 By: 

19 Brett H. Bailey
20 Attorneys for
21 Beckman Capital Corporation
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PROOF OF SERVICE

I am a resident of the State of California, over the age of eighteen years, and not a party to the within action. My business address is Sedgwick, Detert, Moran & Arnold LLP, One Embarcadero Center, 16th Floor, San Francisco, California 94111-3628. On May 20, 2004, I served the within document(s):

**PETITION OF BECKMAN CAPITAL CORPORATION FOR REVIEW OF
CENTRAL VALLEY REGIONAL WATER QUALITY CONTROL
BOARD ORDER NO. R5-2004-0043**

- ☐ FACSIMILE - by transmitting via facsimile the document(s) listed above to the fax number(s) set forth on the attached Telecommunications Cover Page(s) on this date before 5:00 p.m.
- ☒ MAIL - by placing the document(s) listed above in a sealed envelope with postage thereon fully prepaid, in the United States mail at San Francisco, California addressed as set forth below.
- ☐ ELECTRONIC-MAIL - by electronically transmitting the document(s) listed and addressed as set forth below.
- ☐ OVERNIGHT COURIER - by placing the document(s) listed above in a sealed envelope with shipping prepaid, and depositing in a collection box for next day delivery to the person(s) at the address(es) set forth below via .

**John Russell
11020 Sun Center Drive #200
Rancho Cordova, CA 95670-6114**

**Mr. Daniel O'Hanlon
400 Capitol Mall, 27th Floor
Sacramento, CA 95814**

**Re: California Regional Water Control
Board**

Re: City of Lodi

**Ms. Lori Gualco
455 Capitol Mall
Sacramento, CA 95814**

**Mr. Aaron Bowers
701 S. Ham Lane, 2nd Floor
Lodi, CA 95242**

Attorneys for Guild Cleaners, Inc.

Re: Odd Fellows Hall Assn. of Lodi

**Mr. Steve Meyer
555 Capitol Mall, 10th Floor
Sacramento, CA 95814**

**Mr. Scott Sentinel
6 El Dorado South, Ste. 601
Stockton, CA 95202**

Re: Estate of Dwight Alquist

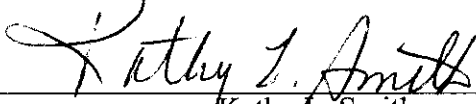
Re: Lodi News Sentinel

**Mr. Scott Malm
6 El Dorado South, Ste. 601
Stockton, CA 95202**

Attorneys for Beckman Capital Corporation

1 I am readily familiar with the firm's practice of collection and processing correspondence
2 for mailing. Under that practice it would be deposited with the U.S. Postal Service on that same
3 day with postage thereon fully prepaid in the ordinary course of business. I am aware that on
motion of the party served, service is presumed invalid if postal cancellation date or postage
meter date is more than one day after date of deposit for mailing in affidavit.

4 I declare under penalty of perjury under the laws of the State of California that the above
5 is true and correct. Executed on May 21, 2004, at San Francisco, California.

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8 Kathy L. Smith
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